

HOUSE BILL No. 1412

DIGEST OF INTRODUCED BILL

Citations Affected: IC 8-1.

Synopsis: Incentives for alternative energy purchases. Provides that purchases of energy, capacity, or renewable energy credits from alternative energy sources are eligible for the financial incentives available for clean coal and energy projects. Specifies that "clean coal and energy projects" includes projects at new or existing energy facilities that involve carbon dioxide capture, storage, and sequestration. Requires the utility regulatory commission (IURC) to allow an energy utility that purchases alternative energy to recover any costs arising under the purchase contract through rate adjustments. Provides that, regardless of changes in market conditions or other circumstances, the IURC (or any other state agency or local governmental unit) may not take any action during the term of an alternative energy purchase contract that adversely affects an energy utility's right to timely recover the utility's costs under the contract. Defines an alternative energy property interest as a right, title, and interest that: (1) is held by an energy utility; (2) is created by a qualified order of the IURC; and (3) entitles the energy utility to recover certain costs incurred in purchasing alternative energy under a qualified contract. Sets forth provisions governing: (1) the assignment of an alternative energy property interest; (2) the rights of assignees, financing entities, and alternative energy sellers; (3) the perfection of a lien and security interest in an alternative energy property interest; and (4) the obligations of an energy utility after the assignment of an alternative energy property interest.

Effective: Upon passage.

Koch

January 13, 2009, read first time and referred to Committee on Commerce, Energy, Technology and Utilities.

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First Regular Session 116th General Assembly (2009)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2008 Regular Session of the General Assembly.

HOUSE BILL No. 1412

A BILL FOR AN ACT to amend the Indiana Code concerning utilities and transportation.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 8-1-2-42.2 IS ADDED TO THE INDIANA CODE
2 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE
3 UPON PASSAGE]: **Sec. 42.2. (a) The definitions in IC 8-1-37 apply**
4 **throughout this section.**

5 **(b) Subject to IC 8-1-37 and notwithstanding any other law, if**
6 **the commission approves a contract for the purchase of alternative**
7 **energy by an energy utility, the commission shall allow the energy**
8 **utility to recover the following costs on a timely basis throughout**
9 **the term of the contract:**

10 **(1) All costs incurred in connection with and resulting from**
11 **the energy utility's purchases under the contract.**

12 **(2) All costs the energy utility incurs in obtaining replacement**
13 **energy, capacity, or renewable energy credits if the**
14 **alternative energy seller fails to provide the alternative energy**
15 **required to be provided under the contract, to the extent those**
16 **costs are not paid by the alternative energy seller.**

17 **(3) Upon petition by the energy utility, any other costs the**



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commission finds are reasonably necessary in association with the contract.

(c) Any costs recovered under subsection (b):

(1) are in addition to the recovery of other costs; and

(2) shall be made through an adjustment under section 42 of this chapter or another rate adjustment mechanism that allows for comparable timely cost recovery.

(d) Regardless of changes in market conditions or other circumstances, the commission may not take any action during the term of a contract approved under this section that adversely affects an energy utility's right to timely recover costs under this section or to otherwise fully recover such costs.

(e) With respect to energy utilities that are parties to a contract for the purchase of alternative energy approved by the commission under this section, the state covenants and agrees that as long as the contract is in effect the state will not limit, alter, or impair an energy utility's right to recover costs as provided in this section. Notwithstanding any other law, neither the commission nor any other state agency, political subdivision, or governmental unit may take any action that would have the effect of limiting, altering, or impairing an energy utility's right to recover costs as provided in this section.

SECTION 2. IC 8-1-8.8-2, AS AMENDED BY P.L.175-2007, SECTION 12, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 2. As used in this chapter, "clean coal and energy projects" means any of the following:

(1) Any of the following projects:

(A) Projects at new energy production or generating facilities that employ the use of clean coal technology and that produce energy, including substitute natural gas, primarily from coal, or gases derived from coal, from the geological formation known as the Illinois Basin, **including projects that involve carbon dioxide capture, storage, and sequestration.**

(B) Projects to provide advanced technologies that reduce regulated air emissions from existing energy production or generating plants that are fueled primarily by coal, or gases from coal, from the geological formation known as the Illinois Basin, such as flue gas desulfurization, ~~and~~ selective catalytic reduction equipment, **and carbon dioxide capture, storage, and sequestration technologies.**

(C) Projects to provide electric transmission facilities to serve a new energy production or generating facility.

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(D) Projects that produce substitute natural gas from Indiana coal by construction and operation of a coal gasification facility.

(2) Projects to develop alternative energy sources, including renewable energy projects ~~and~~ **or** coal gasification facilities.

(3) The purchase of fuels produced by a coal gasification facility.

(4) Projects described in subdivisions (1) ~~through (3)~~ **and (2)** that use coal bed methane.

(5) The purchase of energy, capacity, or RECs from a project described in subdivision (2).

SECTION 3. IC 8-1-8.8-4, AS AMENDED BY P.L.175-2007, SECTION 14, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 4. As used in this chapter, "coal gasification facility" means a facility in Indiana that uses a manufacturing process that converts coal into a clean gas that can be used:

(1) as a fuel to generate energy; or

(2) as substitute natural gas.

SECTION 4. IC 8-1-8.8-6, AS AMENDED BY P.L.175-2007, SECTION 15, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 6. As used in this chapter, "eligible business" means an energy utility (as defined in IC 8-1-2.5-2) or owner of a coal gasification facility that:

(1) proposes to construct or repower a new energy production or generating facility;

(2) proposes to construct or repower a project described in section 2(1) or 2(2) of this chapter;

(3) undertakes a project to develop alternative energy sources, including renewable energy projects or **coal gasification facilities;**

(4) purchases fuels produced by a coal gasification facility; **or**

(5) purchases energy, capacity, or RECs from a project described in section 2(2) of this chapter.

SECTION 5. IC 8-1-8.8-8, AS AMENDED BY P.L.175-2007, SECTION 16, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 8. (a) As used in this chapter, "new energy **production or** generating facility" refers to a generation or coal gasification facility that satisfies all of the following:

(1) The facility produces energy primarily from coal or gases from coal from the geological formation known as the Illinois Basin.

(2) The facility is a:

(A) newly constructed or newly repowered energy ~~generation~~ plant; or

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(B) newly constructed ~~generation~~ capacity expansion at an existing ~~facility~~; **plant**; dedicated primarily to serving Indiana retail customers.

(3) The repowering, construction, or expansion of the facility was begun by an Indiana utility after July 1, 2002.

(4) Except for a facility that is a clean coal and energy project under section 2(2) of this chapter, the facility has an aggregate rated electric generating capacity of at least one hundred (100) megawatts for all units at one (1) site or a generating capacity of at least four hundred thousand (400,000) pounds per hour of steam.

(b) The term includes the transmission lines, gas transportation facilities, and associated equipment employed specifically to serve a new energy generating or coal gasification facility.

SECTION 6. IC 8-1-8.8-9, AS AMENDED BY P.L.175-2007, SECTION 17, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 9. As used in this chapter, "qualified utility system property" means any new energy **production or** generating ~~or coal gasification~~ facility used, or to be used, in whole or in part, by an energy utility to provide retail energy service (as defined in IC 8-1-2.5-3) regardless of whether that service is provided under IC 8-1-2.5 or another provision of this article.

SECTION 7. IC 8-1-8.8-9.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 9.5. As used in this chapter, "renewable energy credit" or "REC" means an interest that:**

(1) represents one (1) megawatt hour of electricity that is generated from a renewable energy resource described in section 10(a) of this chapter;

(2) is quantifiable and transferrable; and

(3) is possessed by not more than one (1) entity at a time.

SECTION 8. IC 8-1-8.8-11 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 11. (a) The commission shall encourage clean coal and energy projects by creating the following financial incentives for clean coal and energy projects, if the projects are found to be reasonable and necessary:

(1) The timely recovery of costs incurred during construction and operation of projects described in section 2(1) or 2(2) of this chapter.

(2) The authorization of up to three (3) percentage points on the return on shareholder equity that would otherwise be allowed to be earned on projects described in subdivision (1).

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(3) Financial incentives for the purchase of fuels produced by a coal gasification facility, including cost recovery and the incentive available under subdivision (2).

(4) Financial incentives for projects to develop alternative energy sources, including renewable energy projects **or coal gasification facilities.**

(5) Financial incentives for the purchase of energy, capacity, or RECs from a project described in section 2(2) of this chapter, including cost recovery and the incentive available under subdivision (2).

~~(5)~~ (6) Other financial incentives the commission considers appropriate.

(b) An eligible business must file an application to the commission for approval of a clean coal and energy project under this section. This chapter does not relieve an eligible business of the duty to obtain any certificate required under IC 8-1-8.5 or IC 8-1-8.7. An eligible business seeking a certificate under IC 8-1-8.5 or IC 8-1-8.7 and this chapter for one (1) project may file a single application for all necessary certificates. If a single application is filed, the commission shall consider all necessary certificates at the same time.

(c) The commission shall promptly review an application filed under this section for completeness. The commission may request additional information the commission considers necessary to aid in its review.

(d) The commission shall, after notice and hearing, issue a determination of a project's eligibility for the financial incentives described in subsection (a) not later than one hundred twenty (120) days after the date of the application, unless the commission finds that the applicant has not cooperated fully in the proceeding.

SECTION 9. IC 8-1-8.8-12, AS AMENDED BY P.L.175-2007, SECTION 19, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 12. (a) The commission shall provide financial incentives to eligible businesses for new energy ~~producing~~ **and production or** generating facilities in the form of timely recovery of the costs incurred in connection with the construction, repowering, expansion, operation, or maintenance of the facilities.

(b) An eligible business seeking authority to timely recover the costs described in subsection (a) must apply to the commission for approval of a rate adjustment mechanism in the manner determined by the commission.

(c) An application must include the following:

(1) A schedule for the completion of construction, repowering, or

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expansion of the new energy **production or** generating ~~or coal gasification~~ facility for which rate relief is sought.

(2) Copies of the most recent integrated resource plan filed with the commission, if applicable.

(3) The amount of capital investment by the eligible business in the new energy **production or** generating ~~or coal gasification~~ facility.

(4) Other information the commission considers necessary.

(d) The commission shall allow an eligible business to recover the costs associated with qualified utility system property if the eligible business provides substantial documentation that the expected costs associated with qualified utility system property and the schedule for incurring those costs are reasonable and necessary.

(e) The commission shall allow an eligible business to recover the costs associated with the purchase of fuels produced by a coal gasification facility if the eligible business provides substantial documentation that the costs associated with the purchase are reasonable and necessary.

(f) The commission shall allow an eligible business to recover the costs associated with the purchase of energy, capacity, or RECs from a project described in section 2(2) of this chapter if the eligible business provides substantial documentation that the costs associated with the purchase are reasonable and necessary.

~~(f)~~ (g) A retail rate adjustment mechanism proposed by an eligible business under this section may be based on actual or forecasted data. If forecast data is used, the retail rate adjustment mechanism must contain a reconciliation mechanism to correct for any variance between the forecasted costs and the actual costs.

SECTION 10. IC 8-1-8.8-13, AS AMENDED BY P.L.175-2007, SECTION 20, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 13. An eligible business shall file a monthly report with the lieutenant governor stating the following information:

(1) The amount of Illinois Basin coal, if any, purchased during the previous month for use in a new energy **production or** generating ~~or coal gasification~~ facility.

(2) The amount of any fuel produced by a coal gasification facility and purchased by the eligible business during the previous month.

(3) The amount of any:

(A) energy;

(B) capacity; or

(C) RECs;

expressed in megawatt hours or equivalent megawatt hours

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of electricity, purchased by the eligible business from a project described in section 2(2) of this chapter during the previous month.

~~(3)~~ (4) Any other information the lieutenant governor may reasonably require.

SECTION 11. IC 8-1-37 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]:

Chapter 37. Financing of Purchases of Alternative Energy

Sec. 1. (a) As used in this chapter, "alternative energy " means energy, capacity, or renewable energy credits purchased by an energy utility from a clean coal and energy project described in IC 8-1-8.8-2(2).

(b) The term does not include:

- (1) substitute natural gas produced at a coal gasification facility; or
- (2) electricity generated in connection with the production of substitute natural gas at a coal gasification facility;

that is purchased by an energy utility.

Sec. 2. As used in this chapter, "alternative energy property interest" means the right, title, and interest that:

- (1) are held by an energy utility or its assignee;
- (2) are created by a qualified order; and
- (3) entitle the energy utility or its assignee to recover qualified costs under IC 8-1-2-42.2.

Sec. 3. As used in this chapter, "alternative energy seller" means any individual, corporation, or other legal entity from whom an energy utility purchases alternative energy.

Sec. 4. (a) As used in this chapter, "assignee" means any individual, corporation, or other legal entity to which an alternative energy property interest is transferred.

(b) The term includes an assignee of a person described in subsection (a).

Sec. 5. As used in this chapter, "commission" refers to the Indiana utility regulatory commission created by IC 8-1-1-2.

Sec. 6. As used in this chapter, "energy utility" has the meaning set forth in IC 8-1-2.5-2.

Sec. 7. As used in this chapter, "financing entity" means a person that provides:

- (1) equity financing; or
- (2) debt financing;

that is secured by an alternative energy property interest.

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1 **Sec. 8. As used in this chapter, "qualified contract" means a**
 2 **contract with a term of at least thirty (30) years for the sale of**
 3 **alternative energy to an energy utility.**

4 **Sec. 9. As used in this chapter, "qualified cost" means any cost**
 5 **incurred by an energy utility in purchasing alternative energy**
 6 **under a qualified contract.**

7 **Sec. 10. As used in this chapter, "qualified order" means a final**
 8 **and irrevocable order that:**

9 (1) **is issued by the commission; and**

10 (2) **approves a qualified contract adopted in accordance with**
 11 **this chapter and IC 8-1-2-42.2.**

12 **Sec. 11. (a) Notwithstanding any other law, the commission may,**
 13 **in accordance with this chapter and IC 8-1-2-42.2, issue a qualified**
 14 **order that:**

15 (1) **approves the terms of a qualified contract; and**

16 (2) **authorizes the recovery of qualified costs by an energy**
 17 **utility from its customers.**

18 (b) **A qualified order issued under this section may not be:**

19 (1) **rescinded;**

20 (2) **nullified; or**

21 (3) **modified;**

22 **in a manner that reduces or otherwise impairs the value of an**
 23 **alternative energy property interest.**

24 **Sec. 12. (a) An alternative energy property interest, including**
 25 **any right to future purchases of alternative energy during the term**
 26 **of a qualified contract, constitutes a present property right.**

27 (b) **Qualified costs recovered by an energy utility under a**
 28 **qualified order constitute proceeds of only the alternative energy**
 29 **property interest that is created by the qualified order.**

30 (c) **If the commission issues a qualified order under section 11**
 31 **of this chapter, the state covenants and agrees, for the benefit of**
 32 **the energy utility and any assignee or financing entity involved,**
 33 **that the state will not take or permit any action that would:**

34 (1) **reduce or otherwise impair the value of the alternative**
 35 **energy property interest created by the qualified order; or**

36 (2) **limit, alter, or impair:**

37 (A) **the qualified order;**

38 (B) **the alternative energy property interest created by the**
 39 **qualified order; or**

40 (C) **qualified costs that are:**

41 (i) **imposed on and collected by the energy utility; and**

42 (ii) **remitted to the alternative energy seller;**

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under the terms of the qualified contract;
until the qualified contract has been performed in full.

Sec. 13. (a) An energy utility may assign an alternative energy property interest to an assignee, including:

- (1) another party to the qualified contract; or
- (2) a financing entity.

An assignee may in turn assign an alternative energy property interest to a financing entity that provides financing to the assignee.

(b) An assignment to a financing entity under this section may be:

- (1) an absolute assignment of the alternative energy property interest; or
- (2) an assignment of the alternative energy property interest as collateral for an obligation owed to the financing entity.

(c) An assignee under this section may enforce the alternative energy property interest by all applicable legal and equitable means.

(d) Any amounts collected by an energy utility in connection with the sale, transfer, or disposition of alternative energy under a qualified contract that forms the basis of an alternative energy property interest assigned under this section constitute the property of the assignee. Pending the transfer of the alternative energy property interest to the assignee, the amounts described in this subsection shall be:

- (1) segregated by the energy utility; and
- (2) held in trust for the benefit of the assignee;

subject to the terms of the qualified contract that forms the basis of the alternative energy property interest that is being assigned.

Sec. 14. The interests of an assignee in:

- (1) an alternative energy property interest transferred to the assignee under section 13 of this chapter; and
- (2) any revenues or collections arising from the alternative energy property interest transferred;

are not subject to setoff by the energy utility that transferred the alternative energy property interest, or by any other person, in connection with any bankruptcy proceeding involving the energy utility.

Sec. 15. (a) If an agreement by an energy utility or an assignee to assign an alternative energy property interest expressly states that the assignment is a sale or is otherwise an absolute transfer:

- (1) the resulting transaction:

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(A) is a true sale; and

(B) is not a secured transaction; and

(2) title, both legal and equitable, passes to the person to which the alternative energy property interest is assigned.

(b) A transaction resulting from an agreement described in subsection (a) is a true sale regardless of whether:

(1) the assignee has recourse against the assignor; or

(2) the agreement provides for any of the following:

(A) The assignor's retention of an equity interest in the alternative energy property interest transferred.

(B) Continuing obligations of the energy utility under the qualified contract, including the obligation of the energy utility to serve as the collector of qualified costs.

(C) The treatment of the transfer as a financing for tax, financial reporting, or other purposes.

Sec. 16. (a) An alternative energy property interest does not constitute an account or a general intangible under IC 26-1-9.1-102. The creation, granting, perfection, and enforcement of liens and security interests in alternative energy property interests are governed by this chapter and not by IC 26-1-9.1.

(b) A valid and enforceable lien and security interest in an alternative energy property interest may be created only by the execution and delivery of a security agreement with a financing entity in connection with the issuance of indebtedness. The security interest attaches automatically from the time that value is received for the indebtedness secured by the alternative energy property interest and, upon perfection through the filing of notice with the secretary of state:

(1) constitutes a continuously perfected lien and security interest in the alternative energy property interest and all proceeds of the alternative energy property interest, whether or not accrued;

(2) has priority in the order of its filing; and

(3) takes precedence over any subsequent judicial lien or other creditor's lien.

If notice is filed with the secretary of state not later than ten (10) days after value is received for the indebtedness, the security interest is perfected retroactive to the date the value was received. If notice is not filed with the secretary of state within ten (10) days after value is received for the indebtedness, the security interest is perfected as of the date of filing.

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(c) Transfer of an alternative energy property interest to an assignee is perfected against all third parties, including subsequent judicial or other lien creditors, upon:

- (1) the delivery of transfer documents to the assignee; and
- (2) the filing of notice with the secretary of state in accordance with subsection (b).

However, if notice of the transfer is not filed with the secretary of state within ten (10) days after the delivery of the transfer documentation, the transfer of the alternative energy property interest is not perfected against third parties until the notice is filed.

(d) The priority of a lien and security interest under this section is not impaired by either of the following:

- (1) A later modification of the qualified order creating the alternative energy property interest being transferred.
- (2) The commingling of other funds with funds collected in connection with a qualified contract. Any other security interest that may apply to funds collected in connection with a qualified contract terminates when the funds are transferred to a segregated account for the benefit of the assignee or a financing entity. If an alternative energy property interest has been transferred to an assignee, any proceeds from the alternative energy property interest shall be held in trust for the assignee.

(e) If a default or termination occurs in connection with a financing secured by an alternative energy property interest, the financing entity or its representative may foreclose on or otherwise enforce its lien and security interest in the alternative energy property interest as if the financing entity were a secured party under IC 26-1-9.1. Amounts arising from the qualified contract that is the basis of the alternative energy property interest shall be transferred to a separate account for the financing entity's benefit and are subject to the financing entity's security interest and lien.

Sec. 17. An assignee or a financing party is not considered an energy utility solely by virtue of its participation in any transaction described in this chapter.

Sec. 18. Any entity that becomes a successor to an energy utility as the result of:

- (1) any bankruptcy, reorganization, or other insolvency proceeding;
 - (2) any merger, sale, or transfer involving the energy utility;
- or

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1 (3) the operation of law;
 2 or for any other reason, shall perform and satisfy any obligations
 3 of the energy utility incurred under this chapter in the same
 4 manner and to the same extent as the energy utility would have
 5 been obligated to perform, including the obligation to pay to an
 6 assignee any funds collected by the energy utility in connection
 7 with the alternative energy property interest assigned to the
 8 assignee.

9 Sec. 19. An alternative energy seller that is an assignee may
 10 contract with the energy utility, in the qualified contract or in
 11 another contract, for the performance of services related to the sale
 12 of alternative energy under the qualified contract, including:

13 (1) the transmission or distribution of alternative energy; and

14 (2) billing, collection, and other related services;

15 according to terms and conditions that reasonably compensate the
 16 energy utility for its services and adequately secure payment to the
 17 alternative energy seller.

18 Sec. 20. If an energy utility makes a true sale of an alternative
 19 energy property interest to an alternative energy seller under
 20 section 15 of this chapter, the alternative energy seller:

21 (1) retains title to all alternative energy distributed to the
 22 energy utility's retail end use customers;

23 (2) is entitled to all amounts collected by the energy utility
 24 from its retail end use customers for the alternative energy
 25 provided to those customers, subject to the terms of the
 26 qualified contract; and

27 (3) has the same rights to payments made by the energy
 28 utility's retail end use customers as does the energy utility that
 29 provides the alternative energy to those customers.

30 SECTION 12. An emergency is declared for this act.

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